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10/081,040

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EXAMINER

DIXON, ANNETTE FREDRICKA

ART UNIT

PAPER NUMBER

3771

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

|                              |                               |                                 |  |
|------------------------------|-------------------------------|---------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/081,040 | Applicant(s)<br>DALGETTY ET AL. |  |
|                              | Examiner<br>Annette F. Dixon  | Art Unit<br>3771                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 14-22 and 31-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 23-26 and 28-30 is/are rejected.
- 7) ☒ Claim(s) 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 5/10/02, 5/21/04, 11/22/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group I, claims 1-13 and 23-30, in the reply filed on November 2, 2006 is acknowledged. The traversal is on the ground(s) that claims 14-22 and 31-38 shares a special technical feature with the elected claims in the pending application and that by searching and examining these claims together would not place an undue burden on the Examiner. This is not found persuasive and the Examiner respectfully disagrees. As previously stated, these inventions are distinct and therefore would place an undue burden on the Examiner to search and examine both groups of claims together. For that reason, the requirement is still deemed proper and is therefore made FINAL.

2. Claims 14-22 and 31-38 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on November 2, 2006.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-13, 23-26, and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over French (6,352,076) in view of Johnson (3,794,027).

As to Claims 1, 10, 11, and 23, Johnson discloses a gas delivery system capable of delivering an anesthesia gas to a plurality of gas outlets, the system comprising: an oxygen inlet (represented by the connection between the tank and the pressure regulator) that receives oxygen from the oxygen source (68); a pressure regulator (74) having an inlet that receives oxygen from the oxygen inlet and having an outlet (represented by the tube 66, that directed gas flow through the flow valve 74) that provides oxygen at a lower pressure; an anesthesia gas source (59) having an inlet (14) couple to receive low pressure oxygen from the outlet for the pressure regulator and capable of adding anesthesia gas to the low pressure oxygen; a first gas delivery outlet (88) couple to a gas delivery device having one or more living specimen interfaces (106) and capable of providing anesthesia gas and oxygen to one or more living specimen interfaces (106); and a second gas delivery outlet (18). Yet Johnson does not teach the second gas delivery outlet coupled to an induction chamber and capable of providing anesthesia gas and oxygen to the induction chamber. However, at the time

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the invention was made the use of a gas delivery outlet coupled to an induction chamber was well known. Specifically, French teaches a gas inlet (56) for providing a means for small animals to receive anesthesia while in a controlled environment. Therefore, it would have been obvious to one having ordinary skill in the art to modify the device of Johnson to include the enclosed chamber of French for the purpose of providing a means for the animal to receive an anesthesia gas and oxygen mixture. (Figures 1 and 2)

As to Claim 2, Johnson discloses the first gas delivery outlet to comprise an outlet port (102) and a first flow control (82) disposed between the anesthesia gas source and the outlet port.

As to Claim 3, Johnson discloses a second gas delivery outlet to comprise an outlet port (18) and a second flow control disposed between the anesthesia gas source and the outlet port (64).

As to Claim 4, Johnson discloses the first and second flow controls each operate independent control.

As to Claim 5, Johnson discloses the flow rate should be set for approximately 4 liters per minute (Column 5, Lines 42-43).

As to Claim 6, Johnson discloses the use of a gas scavenging system using soda lime (Column 2, Lines 1-18) to enable the removal of carbon dioxide from the system.

As to Claim 7 and 8, please see the rejection of claim 6, which discusses the use of a gas scavenging system. However the system of Johnson/French does not expressly disclose the location of the gas scavenging system to be located at the

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bottom of the induction chamber. However, at the time the invention was made it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the location of the gas scavenging system to prevent the egress of anesthesia gas to the environment, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

As to Claim 9, the system of Johnson/French is discussed in claim 1, as taught by Johnson, in the initial stages of anesthesia the second gas delivery outlet (18) connected to the induction chamber provides oxygen (Column 5, Lines 24-26).

As to Claims 12, 24-26, the system of Johnson/French is discussed in claim 1, the disposable sleeve (106) provides a smaller channel for the animals to be anesthetized.

As to Claims 13 and 30, the system of Johnson/French discloses the claimed invention except for a multiplicity of specimen interfaces. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Johnson/French to treat multiple animals, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

As to Claim 28, the system of Johnson/French is discussed in claim 1, and discloses a gas delivery system having an exhaust port (116) for coupling to a conduit (42); at least one hole (84) capable of drawing anesthesia gas when suitable negative pressure is applied; and at least one channel (represented by the flow from valve 124) capable of communicating between the at least one hole and the exhaust conduit.

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As to Claim 29, the system of Johnson/French is discussed in claim 28 and discloses the claimed invention expect for the array of holes. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Johnson/French to have an array of holes for the purpose of providing a uniform exhaust flow, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

***Allowable Subject Matter***

6. Claim 27 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette F. Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Annette F Dixon  
Examiner  
Art Unit 3771  
January 4, 2007



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1/8/07